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DISMISSAL AND CASE CLOSURE UNDER THE ENFORCEMENT PRIORITY SYSTEM

GENERAL COUNSEL'S REPORT

Under the Enforcement Priority System ("EPS"), the Commission uses formal scoring criteria as a basis to allocate its resources and decide which matters to pursue. These criteria include without limitation an assessment of the following factors: (1) the gravity of the alleged violation, taking into account both the type of activity and the amount in violation; (2) the apparent impact the alleged violation may have had on the electoral process; (3) the complexity of the legal issues raised in the matter; and (4) recent trends in potential violations of the Federal Election Campaign Act of 1971, as amended ("the Act"), and developments of the law. It is the Commission's policy that pursuing relatively low-rated matters on the Enforcement docket warrants the exercise of its prosecutorial discretion to dismiss cases under certain circumstances.

The Office of General Counsel has scored MUR 6517 as a low-rated matter and has determined that it should not be referred to the Alternative Dispute Resolution Office. For the reasons set forth below, the Office of General Counsel recommends that the Commission exercise its prosecutorial discretion to dismiss MUR 6517.¹

1 Gary Kenneth King is currently New Mexico's Attorney General and, in 2004,
2 was a candidate for the House of Representatives in New Mexico's Second Congressional
3 District. Bruce Malott was listed as the treasurer of King's now-terminated principal
4 campaign committee, King for Congress (the "Committee"). Malott alleges that King and
5 the Committee violated the Act by continuing to file reports with the Commission until
6 the Committee's termination on April 15, 2010 under Malott's electronic signature, even
7 though Malott orally notified King of his resignation within months of King's 2004
8 electoral defeat, in January 2005. Malott alleges that, following his resignation,
9 respondents violated the Act by (1) failing to file an amended Statement of Organization
10 naming a new treasurer pursuant to 2 U.S.C. § 432(a); (2) making campaign expenditures
11 while the treasurer position was vacant in violation of 2 U.S.C. § 433(c); and (3) filing
12 numerous reports with the Commission using Malott's unauthorized signature in violation
13 of 2 U.S.C. § 434(a)(1).

14 Malott claims that, at a state prayer breakfast event in January 2005, he informed
15 King that he was resigning as treasurer "effective that day." Complaint at 7, ¶27.
16 According to Malott, he told King that he was resigning because the election was over and
17 "he had closed out the Committee's 2004 Year-End Report." *Id.* Despite Malott's alleged
18 resignation, the Committee continued to use Malott's electronic signature on reports filed
19 with the Commission. *Id.*, at 9-10, ¶¶35-36. Malott maintains that, until April 2011, he

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1 did not know the Committee was filing reports with his electronic signature. *Id.*, at 10,
2 ¶40.²

3 King acknowledges that Malott served as treasurer for the Committee. King
4 asserts, however, that Malott did not resign; rather, King maintains that Malott delegated
5 filing authority to King in January 2005:

6 King and Malott discussed the fact that the only activity left to the campaign was
7 the repayment of a bank loan to the campaign and payment of bank fees. King
8 and Malott discussed the fact that there would be no further solicitation of
9 contributions and that King would use personal funds to make all payments.
10 Malott informed King that as long as this was the case, Malott saw no need to
11 review and approve each quarterly report and delegated authority to King to file
12 the reports on his behalf. King and Malott agreed that if there was any activity
13 that did not conform to this plan, King would inform Malott.

14 Response at 2, ¶3. In further support of King's claim that Malott remained the
15 Committee's treasurer, King asserts that his search of the Committee's records did not
16 uncover any written evidence of a resignation. *Id.*, at 4, ¶18.

17 King claims that he was unaware of Malott's asserted resignation until June 2011,
18 when King read a newspaper article, *see supra* n.2, which is referenced in the complaint as
19 an attachment. King also points out that Malott previously served as a treasurer for a
20 number of federal candidates and had experience with federal campaign finances

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² Malott notes that his involvement with the Committee and the potential violations of the Act are recounted in a newspaper article, published in June 2011. Complaint, Attachment 1. *See* Thomas J. Cole, *AG used Malott's signature*, ALBUQUERQUE JOURNAL, June 18, 2011, at A1. The article cites King as saying his "interaction with Malott ended after the 2004 congressional campaign." *Id.* Phil Sinceros, King's spokesman, allegedly told the article's author that Malott's signature continued to appear on the report because "King probably called up forms with Malott's signature, filled them out, then hit 'send.'" *Id.*

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1 law.³ *Id.*, at 4, ¶16. Thus, King asserts, had Malott in fact resigned, he would have
2 worked with him to find a successor treasurer. Response at 5, ¶20.⁴

3 From February 1, 2005 through April 6, 2010, the Committee filed 34 quarterly
4 and year-end reports, 10 amendments, and one Termination Report. Each filed report
5 listed Malott as the Committee treasurer. During this time, the Committee reported little
6 activity other than payments for a \$121,731.79 bank loan. Among its other activity, the
7 Committee paid a \$135.00 Administrative Fine on June 4, 2007 for filing its 2006 Year-
8 End report seven days late. See AF# 1717 (King for Congress).⁵ The Commission
9 granted the Committee's termination request on April 15, 2010, sending the Termination
10 Approval letter to Malott at the Committee's mailing address.

11 Under the Act, every political committee must file a Statement of Organization
12 that provides the name and address of the committee's treasurer. 2 U.S.C. §§ 432(a) and
13 433(a) and (b). Each treasurer must file a report of the committee's receipts and
14 disbursements in accordance with the provisions of 2 U.S.C. § 434, and must verify that
15 he or she has examined the report and, to the best of the treasurer's knowledge and belief,
16 the report is true, correct and complete. See 2 U.S.C. § 434(a)(1); 11 C.F.R. § 104.18(g).

³ According to reports filed with the Commission, Malott served as treasurer for Sam Bregman for Congress from 1999 to 2004, and for the Committee to Elect Michelle Lujan Grisham from 2007 to 2009.

⁴ King maintains that Malott is named in a state "Fraud Against Taxpayers" action filed in New Mexico and "may be under federal investigation for participation in pay-to-play schemes." Response at 5, ¶22. King avers that Malott filed a complaint against King to create a possible conflict of interest that would prevent King, as attorney general, from investigating ethics claims against Malott. King also states that Malott may have filed the complaint "in retribution" because King's office issued an advisory opinion that precluded Malott from claiming reimbursement for legal fees. *Id.*, at 6, ¶12.

⁵ The Committee repaid paying off its bank loan on December 19, 2008 using King's personal funds. In April 2010, the Committee converted an \$80,000 personal loan made by King to a contribution from the candidate.

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1 Committees must report any change in a treasurer's status within 10 days by filing an
2 amendment to the Statement of Organization, and committees are not permitted to raise or
3 spend funds when the treasurer's office is vacant. 2 U.S.C. §§ 432a(a) and 433(c).⁶

4 The facts here are in sharp conflict. Regardless, however, of whether Malott
5 resigned or delegated his filing authority, the Act and Commission regulations require that
6 a treasurer or other signatory has examined and verified all the disclosure reports
7 submitted to the Commission. See 11 C.F.R. § 104.18(g). Thus, even assuming that King
8 is correct and Malott did not resign from his post as the Committee's treasurer, the
9 Committee used Malott's electronic signature on reports that he did not personally review
10 and certify as Commission regulations instruct.

11 Thus, there may well be a violation of the Act and Commission regulations.
12 Nevertheless, further action, which would require the Commission to resolve the disputed
13 facts, is not warranted in view of the Committee's status. See MUR 6298 (Vernon Jones
14 for Georgia) Factual and Legal Analysis (dismissing MUR as a matter of prosecutorial
15 discretion where "there is no existing reporting entity that could agree to take [remedial]
16 actions" for possibly unauthorized physical signature of committee's treasurer). Like the
17 committee in MUR 6298, the Committee here is no longer an existing reporting entity
18 under the Act because it terminated in April 2010. As a consequence, the Office of
19 General Counsel believes that, in this instance, further enforcement action is not
20 warranted.

⁶ Ordinarily, to effect his or her resignation, a treasurer must submit to the Commission an amended Statement of Organization under his or her signature. 2 U.S.C. § 432(a). If a committee is unable to amend its Statement of Organization in this manner, it may notify the Commission, through a letter or Form 99 electronic entry, of the treasurer's resignation.

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RECOMMENDATIONS

Accordingly, the Office of General Counsel recommends that the Commission exercise its prosecutorial, dismiss this matter, close the file, and send the appropriate letters. *See Heckler v. Chaney*, 470 U.S. 821 (1985).

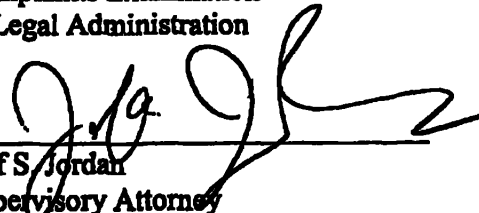
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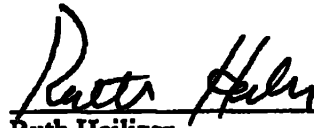
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